XI-HC-22

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

(21)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

CRIMINAL APPEAL NO.236 OF 2000

APPELLANT (In Jail) — Mangal Prasad @ Badda @ Bhaira Satnami, S/o Guru Satnami, aged about 32 years, r/o village Supa, Police Station Pussore, District Raigarh.

Vs

RESPONDENT — State of M.P., through District Magistrate, Raigarh (M.P.)

Present:
Mr. Rajendra Tripathi, Advocate for the appellant.
Mr. Arun Sao, Government Advocate for the respondent-State.

ORAL JUDGMENT
(20th September, 2007)

Per Dhirendra Mishra, J:

This criminal appeal is directed against the judgment of conviction and order of sentence dated 11th January, 2000 passed by the learned 1st Additional Sessions Judge, Raigarh in S.T. No.91/98 whereby the appellant has been convicted under Section 376 (1) of the IPC and sentenced to undergo R.I. for 7 years.

Case of the prosecution, in brief, is that on 18.5.1998 at about 12.00 noon the prosecutrix had gone in search of her buffalo towards village pond, as her husband had gone to the market. The appellant met her near the pond and enquired from her as to where she was going and

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thereafter he also followed her. The appellant caught her and laid her on the field, thereafter forcibly raped her and threatened her not to shout. The prosecutrix returned home, however, by that time her husband has not returned, therefore, she narrated the incident to her brother-in-law Nanhuram (PW-6). After return of her husband Girdhari (PW-1) report was lodged in the Police Station Pussour, District Raigarh vide Ex.P-9.

During investigation the prosecutrix was sent for medical examination to K.G. Hospital, Raigarh where Dr. (Smt.) S. Ekka (PW-11) examined her and gave her report of Ex.P-8. Petticoat of the prosecutrix was taken into possession vide Ex.P-3, lungi lying on the place of incident was taken into possession vide Ex.P-4 and underwear of the accused taken into possession vide Ex.P-5. Articles seized during investigation being wearing apparels of the prosecutrix and the accused and vaginal slides of the prosecutrix were sent for chemical examination to Forensic Science Laboratory, Raipur and the report of FSL is Ex.P-15

After completing investigating the charge sheet was filed and during trial the prosecution examined 13 witnesses. In the statement recorded under Section 313 of Cr.P.C. the appellant did not take any specific defence, however, he has examined three witnesses in his

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defence. Learned trial court after hearing the counsel for the respective parties, convicted and sentenced the appellant, as mentioned in Para 1 of this judgment.

Learned counsel for the appellant submits that the prosecutrix is a grown-up lady, time of incident is alleged around 12.00 noon and the place of incident is an open field near the village pond where the persons were present and therefore, the case of the prosecution is highly improbable. He further submits that it is not possible to commit sexual intercourse with a grown-up lady without her consent. He further submits that there is material contradiction in the statement of prosecutrix, which makes her version unreliable. No independent witness has been examined as all the other witnesses are the close relatives of the prosecutrix. The injury sustained by the prosecutrix is probable even if the sexual intercourse is committed with the consent of the prosecutrix in the open field.

On the other hand, learned counsel for the State has supported the impugned judgment.

I have heard learned counsel for the parties.

Conviction of the appellant is based on the statement of the prosecutrix as also her husband Girdhari (PW-1), Nanhuram (PW-6) & Dr. (Smt.) S. Ekka (PW-11), who has examined the prosecutrix after the

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incident and gave her report of Ex.P-8. Conviction is also based on the FSL report of Ex.P-15, which mentions that lungi found from the place of incident, petticoat & vaginal slides of the prosecutrix were stained with human spermatozoa.

The prosecutrix has been examined as PW-3 and she has stated that on the date of incident at about 12.00 noon she had gone in search of her buffalo as her husband had gone to the market. She met the accused on way near pond, he told her that her buffalo is on that side, on the information of the accused she went towards the direction pointed by the accused, at that time the accused forcibly dragged her near mango grove and raped her after undressing her. When she tried to shout, the accused pressed her neck. Thereafter she returned to home and narrated the incident to her brother-in-law as also other persons including village Kotwar of the village namely Ghasiram and thereafter lodged the report in the police station where her petticoat was seized. In the cross-examination of this witness, contradiction has been pointed out regarding underwear put by her at the time of incident, however, except this contradiction the defence has not been able to elicit anything, which makes the statement of prosecutrix unreliable.

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Nanhuram (PW-6), brother of husband of prosecutrix, has also stated that on the date of incident he was sleeping in his home after taking his meal, the prosecutrix came abusing and shouting that accused had ~~raped~~ robbed her honour. She also informed that accused is coming, whereupon, he picked up a lathi and came out of the house, after seeing him the accused started running, whereupon he caught him and assaulted him once by lathi on his leg and thereafter he went to lodge the report. However, assaulting the accused by lathi is an improvement in his diary statement of ExP-2. He has denied the suggestion that they are implicating the accused at the instance of Tilakram, as litigation is going on between Tilakram and Rajaram.

Girdhari (PW-1), husband of the prosecutrix, has also stated that when he returned from the market, he enquired from his wife whereupon she informed that the accused has raped her honour in the field near the pond. In his cross-examination also no material omission or contradiction has been pointed out by the defence to disbelieve the evidence of this witness.

The version of the prosecutrix is also corroborated from the statement of Dr. (Smt.) S. Ekka (PW-11) who has examined the prosecutrix and found abrasions over her right & left elbow. Slide was prepared by the doctor and the same was seized and sent for

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examination to the FSL and report of FSL is Ex.P-15. The version of the prosecutrix is also corroborated by the promptly lodged FIR.

Defence of the appellant, as appears from the cross-examination of the prosecution witnesses is that of complete denial and false implication due to ~~fictional~~ factional rivalry. However, either from the statement of defence witnesses or from the cross-examination of the prosecution witnesses the appellant has not been able to establish any previous animosity between the family of the prosecutrix and the appellant, which would justify the defence that on account of above animosity the appellant has been falsely implicated and that too in a case of rape involving the honour of the prosecutrix.

In the result, the appeal has no merit, the same is liable to be dismissed and it is, accordingly, dismissed.

Sd/-
Dhirendra Mishra
Judge